

LIVABLE DELAWARE ADVISORY COUNCIL

Paradee Building

May 12, 2003

Minutes

Members Present: Lt. Governor John Carney, Chair
Joe Corrado
Sherry Freebery
Nathan Hayward
James L. Hutchinson
Randy Marvel
Robert McLeod
Paul Morrill
Ken Murphy
Richard Pryor
Marty Ross
Rep. Roger Roy
Michael Scuse
Lori Spagnolo
Robert Stickels
Sen. Robert L. Venables
Lee Ann Walling
Rick Woodin

Members Absent: Judy Cherry
John Hughes
Joe Myer

Others Present: Dick Baldwin, Town of Smyrna
Karley Barnes, Budget Office
Kevin Coyle, DNREC
David Edgell, State Planning
Charlotte Hale, News Journal
Richard Harman
Marcus Henry, Del. State Housing Authority
Connie Holland, State Planning
Karen Horton, Del. State Housing Authority
David Hugg, Town of Smyrna
Herb Inden, State Planning
Roger Jones, Nature Conservancy
Robin Jurgens
C. Scott Kidner, Del. Assoc. of Realtors
Andrea Kreiner, Office of the Governor
Richard Kautz, Sussex County Planning
Steve LeFebvre, HBA/DE
Mike Mahaffie, State Planning
Kevin McSweeney, SMF

William Narcowich, Civic League of New Castle County
Maureen Raitz, Smyrna Clayton Sun
Len Rippa, Town of Smyrna
Kimberly Schlichting, Town of Smyrna
Ann Marie Townshend, State Planning
Drew Volturo, Delaware State News
Cris & Dee Watson

Mr. Carney called the meeting to order at 1:10 p.m.

Timeline for State Strategies

Mr. Mahaffie went over the timeline for the Strategies for State Policies and Spending update which must be completed by December 2004.

Mr. Edgell discussed the map, which depicts what state the municipalities are in regarding comprehensive plans.

Smyrna/NCC Dispute Resolution

Mr. Carney explained that this body is responsible for reviewing the recommendation of the Dispute Resolution Committee regarding the Town of Smyrna annexation area and the fact that it goes across Duck Creek into New Castle County. Mr. Carney asked Ms. Holland to discuss the process and then the committee would discuss the decision.

Mr. Morrill stated that he would have like to have been invited to the Dispute Resolution meeting so that he could have heard the issues first hand. Ms. Holland thanks Mr. Morrill for his suggestion and stated that that was something that her office had not thought of, but if there is a need to bring the Dispute Resolution Committee together again, she will make sure the LDAC knows about the meeting date.

Mr. Carney stated that this was the first meeting of this committee and the first time to test the process so any suggestions on the process would be appreciated.

Ms. Holland asked that the members refer to their packet. he Office of State Planning sent out the meeting summary from the Dispute Resolution meeting as well as the information that all three parties presented to the committee.

Ms. Holland stated that the Dispute Resolution hearing was held on April 28th and lasted about 4 hours under set criteria. The public was there but they did not give input. She stated that being first was very difficult for the three members that were there; Mr. Ed Danberg, Ms. Mary McKenzie and Mr. Joe McDonough.

Mr. Edgell discussed the state's position with regard to Smyrna's Comprehensive Plan. He showed the comprehensive plan map and went over the different areas of proposed annexation. He noted that one section would include a business and commerce area, the Route 13 corridor, and then an area west of Route 13 as residential. Mr. Edgell noted that the state's position is to not be supportive of the residential annexation due to the fact that Smyrna already has roughly 1000 lots within the town limits to be developed and they included areas to the south, in Kent County, that will also provide for residential development. The state does support their idea of Smyrna's business and commerce area and Mr. Edgell stated that it would further the goal of economic development and furthers the philosophy of their plan in making Smyrna a place where you can both live and work.

Mr. Edgell stated that the Office of State Planning is in the process of updating the Strategies for State Policies and Spending map and one of our approaches would be to take the certified comprehensive plans from the various jurisdictions and the counties and meld them together and work out some of the differences. We are willing to consider this area and work with the town and the county to integrate that into the future state plans if this body deems it to be appropriate.

Mr. Carney asked Mr. Edgell to summarize the county and town position regarding the area. Mr. Edgell stated that the Town of Smyrna has a well written comprehensive plan which meets the requirements. Their rationale for the business area is that they want new opportunities for economic development to occur. They are interested in a business park feel. Smyrna also feels that with the opening of Route 1 and the additional growth pressures on their community, that they are experiencing a rapid rise in residential growth. They feel the area west of Route 13 is essential for them to maintain their capacity for future residential growth.

The New Castle County position is that they have since 1997 been planning for this area to remain as a rural area and it has been downzoned to a five acre minimum lot size. They want preservation in this area and they feel that development of this area would jeopardize their growth plans for the Southern New Castle County growth area.

Mr. Edgell noted that the strategies map corresponds with the county plan as of 1997 and 1999 but we did not have the benefit of Smyrna's plan.

Mr. Murphy asked if the state was saying that the residential was not needed to support the plan or that it should be elsewhere. Mr. Edgell stated that the plan demonstrates that they have an adequate supply of residential land for their growth potential for the next 5 - 10 years.

Mr. Carney and Mr. Edgell discussed the allocation of the population.

Mr. Carney asked about the anticipated sewer requirement for this area. Ms. Holland presented a letter from Kent County regarding the sewer. Mr. Edgell stated that Smyrna has completed a Sewer Facilities Plan for this area.

Mr. Stickels stated that this council is being asked to decide on the decision of the committee; now this council is being given information that they were not privilege to. Mr. Stickels stated that that this council should only consider what the Dispute Resolution Committee considered. Ms. Holland stated that through she did tell the Dispute Resolution Committee that the plan would not have moved forward if sewer was not available. Mr. Carney stated that he does not see an issue with hearing additional information or clarification on an issue if the council choses to make their decision with out the clarification.

Mr. Stickels asked if the meeting was limited to that day. Ms. Holland stated that they were encouraged to reach a decision that day but it could have been extended.

Mr. McLeod stated that the legal points go beyond whether or not the county has the capacity. Kent County is going to provide sewer within the growth zone. At the last meeting he made the point that the county is not going to provide sewer service in an area that they are not the sewer authority without concurrence of that sewer authority.

A motion was made by Mr. Stickels and seconded by Ms. Freebery that the testimony today be limited to what was stated at the Dispute Resolution Committee meeting.

Discussion: Mr. Carney does not think it is necessary to limit the information that they consider.

Mr. Hayward asked, "If a trial judge hears a case and then it is appealed, if some additional piece of information comes to forward after the trial has been concluded and a decision rendered, when the appeals court is presented to with the case, wouldn't they normally remand the case back to the trial judge?" Ms. Freebery stated that appeals go forward on the record. If there is new information, then a motion can be made for a new hearing but if it is an appeal, it is a record hearing.

**In Favor: 5
Opposed: 8
Motion failed**

The issue of anticipated growth was discussed. Mr. Carney stated that he has had this conversation with Mr. Ed Ratledge and it is a concern. Mr. Morrill asked Mr. Baker if the county made assumption as to where people would live, work, etc. Mr. Baker stated that they do make those assumptions.

Mr. Hutchinson stated that every municipality needs to have a chance to grow. If they do not there will be more demands on the infrastructure than they have the economic base to support. He does agree that a plan is needed and that all forms of government need to work together to get this done.

Mr. Hayward discussed the proposed annexation area, the Dispute Resolution Committee recommendation and the state position. Ms. Holland stated that the committee voted 2-1 that they did not like the residential but they, in fact, did not have enough information on the commercial.

It was clarified that the committee voted 2-1 to deny the annexation of either area.

Ms. Holland discussed the compromise that was made with Kent County and went through the meeting summary regarding the Dispute Resolution Committee recommendations.

Mr. Carney discussed the decision of the Dispute Resolution Committee and commended them for the job they did. Especially considering it was the first dispute and they felt they had to make the decision that day. Mr. Carney noted that this is what makes the question of annexation so difficult. It is about the adequate, appropriate planning and funding of infrastructure. The whole idea in getting people together is so that you can make the investment and have some kind of assurance that you are not going to be caught holding the bag. This is why he felt uncomfortable with the residential piece of this annexation proposal. In his view, Mr. Carney stated that commercial area made sense because we talk about the traffic that goes up and down the corridor. The problem is that there are not enough employment areas either in the Middletown area or in between.

Mr. Carney stated that he has pursued some sort of agreement with the parties around accepting the commercial piece with an agreement with what happens in the future with other annexations across the county line and was not able to get to a place where either the mayor or the county could feel they had what they needed for their respective governing bodies.

At this point, the LDAC can either entertain a motion to uphold or rescind the Dispute Resolution Committee or ask the parties to try a compromise one more time. Ms. Freebrey asked that a resolution be reached today.

Mr. Ross asked what would happen if this body upheld the Dispute Resolution Committee decision. Ms. Holland stated that she can certify the plan up to the New Castle County line. This committee is only dealing with the New Castle County section of the plan.

Mr. Ross stated that he had seen the area and he feels that this area will develop within the next five years. If this recommendation doesn't stand then a developer can develop one house per every five acres and eat up the land. He would like to see some sort of compromise.

Mr. Stickels stated that New Castle County has a certified land use plan which went through the public process and everyone had a chance to comment on the plan. By the state certifying the plan, we are saying that we agree with their plan. Now we are being asked to say we don't agree because someone wants to change. Mr. Carney stated that that will happen every five years. Mr. Stickels agreed but stated that things could change within those five years.

Mr. Ross stated that if development patterns change then these lands will stay open, but it is a bigger risk to wait and see because if it does build it will be on five acre lots.

Mr. Carney stated that his question is how to maintain a certain amount of certainty within the infrastructure planning process and still have comprehensive plans that are living revolving documents.

Mr. Carney asked Mr. Dave Hugg what type of sewer capacity demands there would be for the purple areas (commercial) of the map. Mr. Hugg stated that the Town of Smyrna did a water and wastewater plan for this area. In worst case scenario, 2 million gallons a day split 60/40 between residential and commercial. Ms. Holland noted that Mr. Hugg had agreed to do a campus type business park.

Ms. Freebery asked to have the Kent County issue related to sewer be resolved. She stated that is was her understanding that the county internal requirements state that there be consensus from the county about providing sewer in then county area so there is no sewer agreement.

Mr. Hugg stated that the Town of Smyrna has an agreement with Kent County that the county accepts sewer from the Town of Smyrna. It does not say that it will accept sewer from the Town of Smyrna in Kent County. It is an open ended agreement.

Mr. McLeod agreed with what Mr. Hugg said. In the past, when there were pipes that needed to be laid in New Castle County they talked to the county and gotten a written agreement to service those areas. This is a step they would want to take in this case.

Mr. Scuse noted that if the area in New Castle County were annexed it would be part of the town - not county. Mr. McLeod stated that the county lines stay the same and the sewer district lines are the county district lines.

Ms. Walling asked if the town would honor a compromise from this group regarding the proposed business park area or would the town annex the residential anyway. Mr. Hugg

noted his February letter which discussed phasing growth. Mr. Hugg went over the letter and discussed proposed phasing of the proposed annexation area. Mr. Hugg stated that by agreeing to phase the areas it would give time to resolve some of the sewer issues and to address the county's concern regarding negative revenue impacts. To his knowledge, this position has not changed since February.

Mr. Carney stated that the question is when a town should be able to annex and with what consideration to the county. Mr. Carney stated that this committee needs to determine if there is a way to accommodate the concerns of the county by some mutual agreement process such as an intergovernmental coordination zone.

Mr. Roy asked if there were anything from preventing Smyrna from annexing, regardless of what happens today. Ms. Holland stated that the Town of Smyrna could lose grants and funding if they annexed against the recommendation of the council. Mr. Roy asked if it would be just in this area or for the whole town. Ms. Holland stated that she would like to see it just in this area. The Office of State Planning would consider the impacts of their funding requests to determine what areas would be served by the grant.

Ms. Lori Spagnolo asked about Green Infrastructure and how this proposal would relate to that map. She encouraged the group to be thinking about green infrastructure and planning for these areas in the future as well as the gray areas. Ms. Holland stated that the Town of Smyrna has agreed to work with the state on an overlay zone for buffers and critical area. Mr. Hugg stated that the town does have an environmental protection overlay district which will apply to that areas north of Duck Creek.

Ms. Woodin stated that the politics of this situation need to be removed. In the southern part of Smyrna about 500-800 homes are being built per year. He stated that an employment center is needed to help create Livable Delaware. He state that he does not think there is a better oriented, better located growth area.

Mr. Hayward asked for clarification on the process. Mr. Carney stated that 2/3rds of the members present could modify or overturn the recommendation of the committee. The recommendation of this council is then sent to the Governor for her decision.

Mr. Roy stated that if the Kent County portion of the plan is certified, the tools for negotiation are taken away. He feels that the LDAC should uphold the recommendation of the Dispute Resolution recommendation and nothing gets certified until the dispute is worked out.

Ms. Holland stated that it would be unfair to Smyrna to not certify the Kent County portion of the plan. It is a good plan and the town and Kent County have worked out their issues.

Mr. Carney stated that an employment center is needed near Smyrna and he would like to see the plan amended to allow for a commercial area with some sort of process of sorting out what size and type of facility, as well as a process that creates certainty for both sides relating to annexation.

Dave stated that he would like to come back to the February letter which would allow the commercial area as well as the area owned by the town just north of Duck Creek.

**Motion made by Mr. Marvel; seconded by Mr. Hutchinson:
Recommend to the Governor that she certify the comprehensive plan of Smyrna in New Castle County including the commercial area between Route 1 and Route 13, the Route 13 corridor commercial area and the small area that Smyrna has requested which includes the proposed county park area and the small residential area around it to facilitate the water and sewer access for the commercial area.**

Discussion: Mr. Hugg stated that the small annexation area includes the 27 acre parcel owned by the town and the 55 acre parcel between this property and the town limits so that it can be annexed.

**Mr. Carney asked for an amendment to the motion; seconded by Mr. Ross. The amendment is as follows:
Provide that certain specificity be given to the commercial area in terms of planning and build out and that certain agreements be reached with New Castle County regarding future annexations.**

**In favor: 4
Opposed: 14
Amendment failed**

**Vote on the motion made by Mr. Marvel and seconded by Mr. Hutchinson.
Recommend to the Governor that she certify the comprehensive plan of Smyrna in New Castle County including the commercial area between Route 1 and Route 13, the Route 13 corridor commercial area and the small area that Smyrna has requested which includes the proposed county park area and the small residential area around it to facilitate the water and sewer access for the commercial area.**

It is noted that there must be a 2/3rds vote for this motion to pass.

**In favor: 9
Opposed: 8
Mr. McLeod abstained
Motion failed – the Dispute Resolution recommendation stands.**

Mr. Morrill stated that the issue of the Local Service Function has to be resolved because that as long as there is a feeling that there is a winner and a loser with annexation in New Castle County, there is never going to be resolution.

Adjournment

A motion was made by Mr. Stickels; seconded by Mr. Roy and unanimously approved by all member present, that with no further business before the committee today, this meeting be adjourned.

The next meeting of the Livable Delaware Advisory Council is set for June 9th, 2003 at the Paradee Building in Dover¹

¹ As requested by Mr. Ross, a copy of the Meeting Summary from the Dispute Resolution Committee is attached.